

Hearing Date: February 4, 2019  
Hearing Time: 10:00 A.M. (ET)  
Objection Deadline: January 26th @ 4:00 pm

Jeffrey K. Garfinkle (*pro hac vice pending*)  
BUCHALTER, Professional Corporation  
18400 Von Karman Avenue, Suite 800  
Irvine, CA 92612  
Telephone: (949) 760-1121  
jgarfinkle@buchalter.com

Counsel for Attorneys for Supplylogix LLC

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

In re	)	Chapter 11
	)	
SEARS HOLDING CORPORATION, <i>et al.</i> ,	)	Case No. 18-23538 (RDD)
	)	
	)	(Jointly Administered)
	)	
Debtors.	)	
	)	
	)	

---

**OBJECTION BY SUPPLYLOGIX LLC TO (1) NOTICE OF CURE COSTS AND  
POTENTIAL ASSUMPTION AND ASSIGNMENT OF EXECUTORY  
CONTRACTS AND UNEXPIRED LEASES IN CONNECTION WITH GLOBAL  
SALE TRANSACTION AND (2) PROPOSED CURE AMOUNT**

Supplylogix LLC (“Supplylogix”) hereby submits this Objection to (1) Notice of Cure Costs and Potential Assumption and Assignment of Executory Contracts and Unexpired Leases in Connection with Global Sale Transaction (“Cure Notice,” Docket No. 1731); and (2) Proposed Cure Amount, filed by Sears Holding Company, *et al.*<sup>1</sup> (the “Debtors”) in the above-captioned jointly administered cases.

---

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are as follows: Sears Holdings Corporation (0798); Kmart Holding Corporation (3116); Kmart Operations LLC (6546); Sears Operations LLC (4331); Sears, Roebuck and Co. (0680); ServiceLive Inc. (6774); SHC Licensed Business LLC (3718); A&E Factory Service, LLC (6695); A&E Home Delivery, LLC (0205); A&E Lawn & Garden, LLC (5028); A&E Signature Service, LLC (0204); FBA Holdings Inc. (6537); Innovel Solutions, Inc. (7180); Kmart Corporation (9500); MaxServ, Inc. (7626); Private Brands, Ltd. (4022); Sears Development Co. (6028); Sears Holdings Management

1. Supplylogix is an industry leader in providing pharmacy and pharmaceutical supply software and related services to realize greater supply chain efficiency and inventory management. Supplylogix is a corporate affiliate and division of McKesson Corporation (“McKesson”).

2. Supplylogix and Kmart Corporation (“Kmart”) are parties to that certain Master Services Agreement dated as of April 19, 2011, as amended and extended in 2015 and 2016 (the “Master Services Agreement”) and listed as No. 6657 in the Cure Notice.<sup>2</sup>

3. Under the Master Services Agreement, Supplylogix facilitates and coordinates pharmaceutical and medical supply purchases, inventory management, and software for Kmart’s various pharmacy locations. Supplylogix continues to provide services, enabling Kmart to continue operating efficiently and preserving patient access to prescription information, affordable medication and other medical supplies

---

Corporation (2148); Sears Home & Business Franchises, Inc. (6742); Sears Home Improvement Products, Inc. (8591); Sears Insurance Services, L.L.C. (7182); Sears Procurement Services, Inc. (2859); Sears Protection Company (1250); Sears Protection Company (PR) Inc. (4861); Sears Roebuck Acceptance Corp. (0535); Sears, Roebuck de Puerto Rico, Inc. (3626); SYW Relay LLC (1870); Wally Labs LLC (None); SHC Promotions LLC (9626); Big Beaver of Florida Development, LLC (None); California Builder Appliances, Inc. (6327); Florida Builder Appliances, Inc. (9133); KBL Holding Inc. (1295); KLC, Inc. (0839); Kmart of Michigan, Inc. (1696); Kmart of Washington LLC (8898); Kmart Stores of Illinois LLC (8897); Kmart Stores of Texas LLC (8915); MyGofer LLC (5531); Sears Brands Business Unit Corporation (4658); Sears Holdings Publishing Company, LLC. (5554); Sears Protection Company (Florida), L.L.C. (4239); SHC Desert Springs, LLC (None); SOE, Inc. (9616); StarWest, LLC (5379); STI Merchandising, Inc. (0188); Troy Coolidge No. 13, LLC (None); BlueLight.com, Inc. (7034); Sears Brands, L.L.C. (4664); Sears Buying Services, Inc. (6533); Kmart.com LLC (9022); Sears Brands Management Corporation (5365); and SRe Holding Corporation (4816). The location of the Debtors’ corporate headquarters is 3333 Beverly Road, Hoffman Estates, Illinois 60179.

<sup>2</sup> Debtors’ Cure Notice separately lists two “Statements of Work” as separate contracts between Supplylogix and Debtors to be assumed. The express terms of the Master Services Agreement encompass all “Statements of Work” (*see* Section 11.11 “Entire Agreement”) and consequently assumption of the Master Services Agreement involves also assuming all outstanding Statement of Work under the Master Services Agreement. Because the express terms of the agreement between Kmart and Supplylogix treat this business relationship as a unitary one governed by the Master Supply Agreement, this Limited Objection does the same and focuses on the Master Supply Agreement as a whole, inclusive of Statements of Work, without waiving any rights or arguments.

4. In the Cure Notice, the Debtors lists the Master Services Agreement as an executory contract which may be assumed by the Debtors and assigned to the successful purchaser of the Debtors' assets and listed the cure amount at \$53,440. That cure amount is incorrect.

5. As of January 24, 2018, the amount owed under the Master Services Agreement to Supplylogix is \$90,253.97. Of that aggregate amount, \$16,625.73 is past-due, with \$36,814.12 due on February 3, 2019 and another \$36,814.12 due on March 4, 2019. Supplylogix continues to perform under the Master Services Agreement and, as a result, the amount. The current aggregate amount owed under the Master Services Agreement is as follows:

Inv Date	Due Date	Age	Inv #	Tax	Gross	Terms
11/23/18	12/13/18	61	100001026-1	0.00	\$ 16,625.73	Net 60
12/5/18	2/3/19	49	7106288826-1	0.00	\$ 36,814.12	Net 60
1/3/19	3/4/19	20	7111114679-1	0.00	\$ 36,814.12	Net 60
				<b><u>Balance</u></b>	<b><u>\$ 90,253.97</u></b>	

6. Pursuant to the U.S. Bankruptcy Code, a debtor in possession is prohibited from assuming an executory contract or unexpired lease unless it cures all monetary defaults in full – including all monetary defaults that arise both pre- and post-petition. *See* 11 U.S.C. § 365(b)(1)(A); *accord, Stoltz v. Brattleboro Housing Authority*, 315 F.3d 80, 94 (2nd Cir. 2002). “The other party to the contract or lease that the [debtor in possession or] trustee proposes to assume is entitled to insist that any defaults, whenever they may have occurred, be cured, that appropriate compensation be provided, and that, a past default having occurred, adequate assurance of future performance is available.” 3 COLLIER ON BANKRUPTCY § 365.05[2] (Alan N. Resnick & Henry J. Sommer

eds., 15th ed. rev. 2008). These conditions “protect the creditor’s pecuniary interests before requiring a creditor to continue a contractual relationship with a debtor.” *Stoltz, supra*.

7. In order to assume and assign the Master Services Agreement and related Statements of Work, the Debtors are obligated to satisfy all monetary obligations, both as itemized in paragraph 5 and any amount due through the assumption and assignment date, as a condition of assumption of the Master Services Agreement pursuant to 11 U.S.C. § 365(b)(1)(A).

WHEREFORE, in order to assume and assign the Master Services Agreement, the Debtors must pay the full amount owed under that agreement through the assumption/assignment date. Currently, that amount totals \$90,253.97 (which exceeds the \$53,440 cure amount listed in the Cure Notice).

Dated: January 25, 2019

/s/ Jeffrey S. Garfinkle  
Jeffrey Garfinkle (Cal. Bar. No. 153496;  
*pro hac vice* application pending)  
Buchalter, P.C.  
18400 Von Karmen Avenue Suite 800  
Irvine, CA 92612  
Telephone: (949) 760-1121  
E-Mail: [jgarfinkle@buchalter.com](mailto:jgarfinkle@buchalter.com)

Attorneys for Supplylogix LLC

**CERTIFICATE OF SERVICE**

The undersigned certifies that he caused to be served a true and correct copy of the attached OBJECTION BY SUPPLYLOGIX LLC TO (1) NOTICE OF CURE COSTS AND POTENTIAL ASSUMPTION AND ASSIGNMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES IN CONNECTION WITH GLOBAL SALE TRANSACTION AND (2) PROPOSED CURE AMOUNT via transmission of Notice of Electronic Filing generated by CM/ECF on all parties of record, and on the parties listed below as indicated

Dated: January 25, 2019

/s/ Jeffrey S. Garfinkle  
Jeffrey Garfinkle (Cal. Bar. No. 153496;  
*pro hac vice* application pending)  
Buchalter, P.C.  
18400 Von Karmen Avenue Suite 800  
Irvine, CA 92612  
Telephone: (949) 760-1121  
E-Mail: [jgarfinkle@buchalter.com](mailto:jgarfinkle@buchalter.com)  
Attorneys for Supplylogix LLC

## **SERVICE LIST**

### **VIA EMAIL**

#### **I. Bid Notice Parties**

##### **a. Debtors**

Rob Riecker: [rob.riecker@searshc.com](mailto:rob.riecker@searshc.com)  
Luke Valentino: [luke.valentino@searshc.com](mailto:luke.valentino@searshc.com)  
Mohsin Meghji: [mmeghji@miiipartners.com](mailto:mmeghji@miiipartners.com)  
General Counsel: [counsel@searshc.com](mailto:counsel@searshc.com)

##### **b. Debtors' counsel**

Ray Schrock, Esq.: [ray.schrock@weil.com](mailto:ray.schrock@weil.com)  
Jacqueline Marcus, Esq.: [jacqueline.marcus@weil.com](mailto:jacqueline.marcus@weil.com)  
Garrett A. Fail, Esq.: [garrett.fail@weil.com](mailto:garrett.fail@weil.com)  
Sunny Singh, Esq.: [sunny.singh@weil.com](mailto:sunny.singh@weil.com)  
Ellen J. Odoner, Esq.: [Ellen.Odoner@weil.com](mailto:Ellen.Odoner@weil.com)  
Gavin Westerman, Esq.: [Gavin.Westerman@weil.com](mailto:Gavin.Westerman@weil.com)

##### **c. Debtors' investment banker:**

Brandon Aebersold and Levi Quaintance: [project.blue.rx@lazard.com](mailto:project.blue.rx@lazard.com)

#### **II. Buyer Parties**

##### **a. Buyer**

Kunal S. Kamlani: [kunal@eslinvest.com](mailto:kunal@eslinvest.com)  
Harold Talisman: [harold@eslinvest.com](mailto:harold@eslinvest.com)

##### **b. Counsel**

Christopher E. Austin, Esq.: [caustin@cgsh.com](mailto:caustin@cgsh.com)  
Benet J. O'Reilly, Esq.: [boreilly@cgsh.com](mailto:boreilly@cgsh.com)  
Sean A. O'Neal, Esq.: [soneal@cgsh.com](mailto:soneal@cgsh.com)

#### **III. Consultation Parties**

##### **a. Bank of America**

Paul Leake, Esq.: [Paul.Leake@skadden.com](mailto:Paul.Leake@skadden.com)  
Shana Elberg, Esq.: [Shana.Elberg@skadden.com](mailto:Shana.Elberg@skadden.com)  
George Howard, Esq.: [George.Howard@skadden.com](mailto:George.Howard@skadden.com)

##### **b. Wells Fargo Bank**

Kevin J. Simard, Esq.: [ksimard@choate.com](mailto:ksimard@choate.com)  
Jonathan D. Marshall, Esq.: [jmarshall@choate.com](mailto:jmarshall@choate.com)

c. Committee

Ira S. Dizengoff, Esq.: [idezengoff@akingump.com](mailto:idezengoff@akingump.com)

Philip C. Dublin, Esq.: [pdublin@akingump.com](mailto:pdublin@akingump.com)

Abid Qureshi, Esq.: [aqureshi@akingump.com](mailto:aqureshi@akingump.com)

Sara L. Brauner, Esq.: [sbrauner@akingump.com](mailto:sbrauner@akingump.com)

**VIA FIRST CLASS MAIL**

Transform Holdco, LLC

c/o ESL Partners, Inc.

Attention: Kunal S. Kamlani and Harold

Talisman 1170 Kane Concourse, Suite 200

Bay Harbor Islands, FL 33154

Sears Holdings Corporation

Attn: General Counsel

3333 Beverly Road

Hoffman Estates, IL 60179

Weil, Gotshal & Manges LLP

Attention: Ray C. Schrock, P.C.,

Ellen J. Odoner, Gavin Westerman and Sunny Singh

767 Fifth Avenue

New York, New York 10153

Cleary Gottlieb Steen & Hamilton LLP

Attention: Christopher E. Austin,

Benet J. O'Reilly and Sean A. O'Neal

One Liberty Plaza

New York, NY 10006